

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Guidelines for Evaluating the  
Environmental Effects of  
Radiofrequency Radiation

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ET Docket No. 93-62

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**COMMENTS ON PETITIONS FOR RECONSIDERATION**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, submits these comments in response to certain Petitions for Reconsideration filed contemporaneously with its own Petition for Reconsideration of the Commission's Report and Order in the above-captioned proceeding.<sup>1/</sup>

**I. The Commission Should Reject Calls for More Onerous Regulation of Transmitter Sites**

In the Order, the Commission eliminated its categorical exclusion for cellular and paging facilities, thereby significantly expanding the number of wireless facilities subject to routine evaluation. The Commission's decision to take such action was not based on scientific evidence that eliminating the categorical exclusion was necessary, but, as the Commission concedes, on "an abundance of caution"<sup>2/</sup> and "generally worst-case assumptions."<sup>3/</sup> Several parties nevertheless ask the Commission to tighten its regulations

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<sup>1/</sup> Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order, FCC 96-326 (rel. Aug. 1, 1996) ("Order").

<sup>2/</sup> Id. at ¶ 92.

<sup>3/</sup> Id. at ¶ 91.

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still further. For example, the Cellular Phone Taskforce ("Taskforce") requests that the Commission modify Section 1.1307 to require routine environmental evaluation of all transmitters, facilities, and operations that are less than 2,000 feet from any residence.<sup>4/</sup>

Another commenter wants the Commission to require applicants to demonstrate that each area within 1000 meters of a facility will not be out of compliance because of exposure from that facility and any other RF source within 1000 meters.<sup>5/</sup> Given that the Commission has conducted its own studies, as well as taken into account the studies and reports provided by other parties in this proceeding, the Commission should reject the calls for more burdensome regulation and, instead, should reinstate its well-founded categorical exclusion for cellular and paging facilities.

As AT&T indicated in its petition, all cellular and paging licensees had previously been categorically excluded from routinely demonstrating compliance because these sites are extremely unlikely to exceed the maximum permissible exposure ("MPE") limits.<sup>6/</sup> This exclusion also released these licensees from responsibility for evaluating and maintaining compliance at multiple transmitter locations. The Commission's Order, however, eliminated this categorical exemption for cellular and paging licensees, and instead requires these entities to utilize Table 1 in Section 1.1307(b)(1) ("Table 1") of the Commission's rules to determine whether specific new or modified facilities remain excluded based on certain

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<sup>4/</sup> Petition for Reconsideration of the Cellular Phone Taskforce at 7 (Sept. 3, 1996).

<sup>5/</sup> Petition for Reconsideration of the Ad-hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules at 6 (Sept. 6, 1996).

<sup>6/</sup> Petition for Reconsideration of AT&T Wireless Services, Inc. at 2-3 (Sept. 6, 1996) ("AT&T Petition").

power and height criteria.<sup>7/</sup> Carriers that are not excluded under Table 1 are obligated to perform a "routine" evaluation to determine if the facility produces power densities exceeding the MPE limits.

As AirTouch Communications ("AirTouch") correctly notes in its petition, the Commission's decision to eliminate the categorical exemption for cellular and paging licensees disregards the evidence in the record demonstrating that existing facilities in these services are unlikely to exceed the new MPE limits for RF emissions in the first place.<sup>8/</sup> Indeed, the Commission admits that "there is no evidence that typical installations in these services cause ground-level exposures in excess of [its] limits."<sup>9/</sup>

Because there is little chance that a stand-alone cellular or paging facility will exceed the MPE limits or contribute significantly to overall radio frequency ("RF") emissions at multiple-transmitter locations, both the Taskforce's proposal to require all licensees to conduct routine transmitter inspections on every facility and the Order's elimination of the categorical exemption will do very little to further the Commission's goal of protecting the public from excessive RF emissions. As the Commission itself stated in the Order, requiring routine evaluation of facilities that offer little or no potential for exposure in excess of the

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<sup>7/</sup> Cellular and paging facilities operating at power levels above 1000 watts ERP and PCS facilities operating above 2000 watts ERP that are located on "relatively short towers or rooftops where access may not be restricted" are subject to "routine evaluations." Order at ¶ 86. In its petition, AT&T asked the Commission to clarify that the certification requirement may be satisfied by including a statement of compliance in an application and, if no application is required, through retention of the statement in the operator's files. AT&T Petition at n.2.

<sup>8/</sup> Petition for Partial Reconsideration of AirTouch Communications at 3 (Sept. 6, 1996) ("AirTouch Petition").

<sup>9/</sup> Order at ¶¶ 92-93.

specified guidelines "would place an unnecessary burden on licensees."<sup>10/</sup> AT&T agrees with the petitions of AirTouch and Paging Network ("PageNet") that this requirement contradicts the Commission's stated goal of reducing unnecessary regulatory burdens.<sup>11/</sup> The Commission accordingly should grant the requests of these petitioners to reinstate the categorical exemption for paging and cellular licensees.

Finally, while AT&T does not oppose the request of the American Mobile Telecommunications Association (AMTA) to narrow the definition of "covered SMR systems" for purposes of categorical exclusion,<sup>12/</sup> it believes that the Commission should treat similar services alike. To the extent the Commission agrees that AMTA's facilities should be excluded, it should also exempt from the RF emissions compliance obligations the facilities used by AT&T for data-only services.

## **II. Power Density and Field Strength Limits At Multi-Transmitter Sites Should Be Increased From One Percent to Ten Percent**

If the Commission declines to reconsider elimination of the categorical exclusion for cellular and paging facilities, it should reevaluate the power density and field strength limits that trigger responsibility for bringing multiple-transmitter sites into compliance. Under the Commission's new rules, when the MPE guidelines are exceeded in an accessible area as a

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<sup>10/</sup> *Id.* at ¶ 86. AT&T has more than 4,500 existing transmitter sites which will have to be physically evaluated by trained engineers if categorical exclusion is not reinstated. On-location measurements or a site visit will be required at all collocated multiple-transmitter sites. It is AT&T's experience that only three or four cell sites can be evaluated by an engineer in a work day.

<sup>11/</sup> AirTouch Petition at 4; Petition for Reconsideration and Clarification of Paging Network at 3 (Sept. 6, 1996) ("PageNet Petition").

<sup>12/</sup> See generally Petition for Reconsideration of the American Mobile Telecommunications Association, Inc. (Sept. 6, 1996).

result of emissions from multiple collocated facilities, any licensee whose transmitters produce field strengths or power density in excess of one percent must ensure the entire area around its facility is in compliance with the applicable limits.<sup>13/</sup> As AT&T demonstrated in its petition, this one percent threshold for MPE guideline compliance is too low.<sup>14/</sup> The Commission, thus, should grant the requests of numerous petitioners to increase the one-percent trigger for site-wide compliance to ten percent. Similarly, the Commission should establish a reasonable distance from the antenna's center of radiation at which the threshold should be measured. AT&T fully supports the requests of Ameritech Mobile Communications, Inc. ("Ameritech") and the Personal Communications Industry Association ("PCIA") to designate a measurement point ten meters from the center of radiation of the antenna.<sup>15/</sup>

Adopting these proposed modifications will alleviate somewhat the myriad logistical difficulties for licensees at multiple-facility sites. As PCIA correctly notes, determining the licensee of nearby facilities will be difficult, and determining their power and frequency will

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<sup>13/</sup> The Commission at least partially justified its new policies on site-wide compliance by reference to a study of two multiple-transmitter roof tops conducted by Doty-Moore Tower Services. Order at ¶ 85, n.112. The Commission wholly ignores the fact that site surveys conducted by Hatfield & Dawson on behalf of AT&T (then McCaw Cellular Communications, Inc.) found that the Doty-Moore conclusions were entirely wrong. Both sites were found to comply with allowable MPE limits. See Reply Comments of McCaw Cellular Communications, Inc. at 8, 11-12 (filed April 25, 1994). Thus, the Commission's reliance on the incorrect Doty-Moore study for purposes of establishing its new regulations is misplaced.

<sup>14/</sup> AT&T Petition at 6-8.

<sup>15/</sup> Petition for Reconsideration and Clarification of Ameritech Mobile Communications, Inc. at 7 (Sept. 6, 1996) ("Ameritech Petition"); Petition for Reconsideration and Clarification of the Personal Communications Industry Association at 15 (Sept. 6, 1996) ("PCIA Petition").

be nearly impossible.<sup>16/</sup> In all likelihood, licensees may only be able to ascertain compliance through field measurements, an expensive and potentially lengthy process. Monitoring of at least 24 hours will be necessary to identify temporary peak loading conditions.<sup>17/</sup> As PCIA and AT&T explained, raising the threshold to ten percent and establishing a reasonable measurement radius will help ensure that the Commission's rules regarding multiple-transmitter responsibility do not create the perverse incentive for licensees to avoid co-location with other facilities.

The Commission should also grant the request of AT&T and other petitioners for clarification of the compliance obligations of previously authorized stations. While the Commission states that all licensees are expected to comply with the Order, it implies that existing stations may continue to operate their facilities in compliance with the RF limits applicable "at the time of licensing and authorization."<sup>18/</sup> Similarly, as AirTouch states in its petition, the Order could be read to subject existing licensees to enforcement measures if a new licensee adds a facility at an existing site, or if an existing licensee adds or modifies a facility at a site where one or more licensees already operate, and that new or modified facility causes the site to exceed acceptable MPE limits.<sup>19/</sup> AT&T agrees with AirTouch

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<sup>16/</sup> PCIA Petition at 15.

<sup>17/</sup> Because of these logistical difficulties, AT&T renews its request that the Commission define "site" as a limited radius around an antenna or group of antennas. AT&T Petition at 6. Absent the establishment of reasonable site boundaries, ensuring site-wide compliance will be extremely burdensome, if not impossible.

<sup>18/</sup> Order at ¶ 119. This implication is supported by the Commission's statement "that the new RF guidelines will apply to station applications filed after January 1, 1997." Id. at ¶ 112.

<sup>19/</sup> AirTouch Petition at 7.

and U S WEST that, at the very least, any incumbent already complying with the standards should be able to expect the burden of site-wide compliance to fall upon newcomers or modifying incumbents who precipitate the excessive emissions.<sup>20/</sup>

### **III. The January 1, 1997 Compliance Date Should Be Extended**

If the Commission decides not to reinstate the cellular and paging categorical exclusion or increase the field strength and power density threshold at multiple-transmitter locations, it is essential that licensees be given more time to comply with new regime. AT&T supports the numerous petitioners who request that the Commission extend the compliance deadline, which is now set at January 1, 1997, to one year after the release of the updated OST Bulletin No. 65.<sup>21/</sup> As AT&T and other petitioners made clear, there are numerous justifications for such an extension of the compliance deadline. The new rules impose significant responsibilities on licensees, especially those -- like AT&T -- who operate thousands of transmitters across the country. It is unrealistic to expect that licensees can ensure compliance with a new and complicated regulatory regime within such a short time frame.<sup>22/</sup> The Commission recognizes that "applicants may need to undertake significant analysis and study in order to comply with the new guidelines."<sup>23/</sup> After determining what

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<sup>20/</sup> Id.; U S WEST Petition at 7.

<sup>21/</sup> See Ameritech Petition at 5; PageNet Petition at 4-5; PCIA Petition at 5, 10; Petition for Reconsideration/Clarification of U S WEST at 5 (Sept. 6, 1996) ("U S WEST Petition"). BellSouth also requests an extension of the transition period to six months after the release of the revised Bulletin. Petition for Reconsideration and Clarification of BellSouth at 5-6 (Sept. 6, 1996) ("BellSouth Petition"). AT&T believes the year-long period is necessary to complete the process adequately.

<sup>22/</sup> See PageNet Petition at 4-5.

<sup>23/</sup> Id.

the obligations are and how to meet them, licensees must then evaluate every transmitter facility to ascertain exemption or compliance. Because this is impossible within the given time period, failure to extend the transition period will require the filing of waiver requests by essentially every carrier. This clearly is not a result intended or desired by the Commission.<sup>24/</sup>

AT&T further agrees with PCIA's proposal that, if the Commission declines to reinstate the categorical exemption for cellular and paging facilities, it should, at a minimum, institute a presumption that individual requests for waivers of the new compliance requirements are deemed granted unless affirmatively denied by the Commission.<sup>25/</sup> Any waiver process, however, is unnecessary and wasteful, overburdening the Commission and carriers without achieving any positive outcome.<sup>26/</sup> Because so many licensees will be unable to comply with the rules, it would make more sense to allow carriers adequate time for transition to the new rules.

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<sup>24/</sup> See PageNet Petition at 4-5; PCIA Petition at 10.

<sup>25/</sup> See PCIA Petition at 14. AT&T also shares the concern of Ameritech that waivers will offer little help to overwhelmed licensees unless the absence of OST Bulletin No. 65 or lack of time to comply equals the "good cause showing" that will justify a waiver. Ameritech Petition at 6.

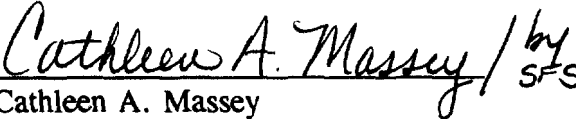
<sup>26/</sup> See U S WEST Petition at 9.

## CONCLUSION

For the foregoing reasons, the Commission should reconsider certain aspects of the RF Radiation Order, as detailed above.

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